

Mr. Lester Snow
CALFED Bay-Delta Program

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DRAFT

Administrative Draft (AD) Programmatic EIS/EIR for the CALFED Bay-Delta Program

The Department of Fish and Game (DFG) has provided a preliminary review of the subject document and offers the following comments to assist the CALFED Bay-Delta Program in preparing the public draft.

We appreciate the opportunity to contribute to completing an acceptable public draft. You and your staff should be commended for the tremendous effort to get to this point in the environmental process. We especially appreciate the efforts of Mr. Rick Breitenbach, Ms. Wendy Halverson Martin, and Mr. Frank Piccola who, along with their assistants and consultant teams, made this review and comment process as streamlined and efficient as possible.

Our comments consist of a summary of the DFG's main concerns and an attached table of page-specific comments. Some of those specific comments help illustrate where in the document our main concerns occur. Our page-specific comments range from general descriptions of the overall concern to recommended text deletions, modifications, and additions that we believe should be made to address our concerns. As directed, we refrained from commenting on editorial issues.

Summary of Main Concerns

The DFG has developed the following preliminary list of its main concerns:

- 1) **Characterization of the Ecosystem Restoration Program Plan (ERPP) as providing mitigation-**

The Ecosystem Restoration Program Plan (ERPP) continues to be represented as providing mitigation for impacts from construction of the alternatives and their common programs. Examples of this can be found on page 7-79 under section 7.2.2.5 Mitigation Strategies. The section discussing temporary or permanent loss or disturbance of wintering waterfowl habitat states that implementing the ERP is a potential mitigation measure. The text should be

clarified that the ERPP will not be used to offset any permanent or temporary impact associated with any other program beside the ERPP.

Text should also be added that states clearly that the terrestrial habitat targets and acreages in the ERPP took into consideration not only what was needed to help restore waterfowl populations and special status species such as the Swainson's hawk and greater sandhill crane but also needs to offset losses of suitable habitat that will be converted to unsuitable habitat such as conversion of agricultural land to tidal emergent wetland. The adaptive management program should recognize this so that adverse effects on these species are fully mitigated. Without careful and complete implementation of the ERPP the statement on page 7-57 under the Ecosystem Restoration Program section that states that the program will have beneficial effects on vegetation and wildlife may not be supportable.

2) Inadequate portrayal of the Existing Condition relative to the No-Action Alternative and Program Alternatives-

We are concerned that the AD does not adequately portray the Existing Condition as it relates to the No-Action Alternative and consequently the Program Alternatives. In most cases the No-Action is portrayed as the equivalent to Existing Conditions even though information is presented elsewhere in the AD that does not support that conclusion (e.g. changes in exports, acres of ag, etc.). The result may be that the AD may comply with NEPA but be deficient from a CEQA perspective. An example of this problem is on page 6-2, Table 6.1-1. The table shows that significant but mitigable impacts occur with the No-Action Alternative. This is not supported by the text which generally says that there is no difference between Existing Conditions and the No-Action Alternative.

Furthermore, when alternatives are rated as providing a beneficial impact or resulting in a negative but non-significant impact relative to the No-Action Alternative no indication is given whether that represents a net improvement or minor impact compared to Existing Conditions. Our concern is, for instance, that an alternative may result in significant adverse impacts compared to existing conditions even though the AD predicts little change from future conditions. This could over-exaggerate the benefits of an alternative and its likelihood of achieving the aquatic resource restoration sought by the Bay-Delta Program. The summary impact tables also lose the connection to the comparison with Existing Conditions. A potential solution is to include a column showing Existing Conditions or explain on the tables why this isn't included.

3) Mischaracterized, confusing, and inconsistent impact presentations-

The AD mischaracterizes or provides confusing impact presentations that are not consistent with the summary tables provided or with what is reasonably expected for a particular

alternative configuration. As currently drafted, the AD may not be as useful as it could be to the public or decision makers. For instance, the impact summary tables may be misinterpreted. These tables are not very effective comparing among alternatives or different variations of alternatives. The AD text in each relevant chapter should include some disclaimer such as: "The information in this summary displays impacts relative to Existing Conditions but does not indicate the relative magnitude of beneficial or negative impacts needed to compare among the different alternatives".

4) Service area impacts are inappropriately deferred-

Service area impacts are inappropriately deferred to future project specific environmental documentation. One example of where this occurs is on page 7-68. The AD should explain that the alternatives will result in service area impacts and those impacts should be addressed now with a suite of proposed mitigation measures. The DFG is available to provide text and potential mitigation measures that would be cost effective approaches to addressing service area impacts on special status species and their habitats.

5) Failure to include a chapter on state and local laws, policies, and plans and consistency with the CALFED alternatives-

The AD should, in a manner similar to Chapter 11, include a chapter on state and local laws, policies, and plans and how consistent the CALFED alternatives and their components may or may not be with them.

6) Agricultural economic impacts are discussed inappropriately-

Agricultural economic impacts are discussed twice (regional and again under agricultural economics). This redundancy should be deleted or its need described. Also, impacts are discussed in two different ways with regards to significance and one of the methods used may not be consistent with CEQA or NEPA. For instance, on page 8-39, significance criteria are described in the "Environmental Consequences: Agricultural Economics" section. Since economic impact effects are not considered environmental impacts under CEQA and NEPA, conclusions are not made with respect to significance. This issue should be clarified.

7) Significance issues related to agricultural impacts-

Impacts to agricultural lands should be described as significant unavoidable impacts. The AD should explain in greater detail the ramifications of that finding and how those types of impacts need to be addressed under both CEQA and NEPA. The DFG recognizes the sensitivity of

this issue and encourages its full disclosure in the DEIS/EIR. Adverse impacts on agricultural lands and related third party impacts must be addressed without causing additional adverse impacts to fish and wildlife habitat.

8) Reference to using public funds to pay for out-of-valley disposal of contaminated drain water-

Specifically referencing the use of public funds for the purpose of out-of-valley disposal of contaminated drain water as a mitigation measure for impacts to agriculture seems inappropriate in this DEIS/EIR. With the risk that some out-of-valley disposal options could cause a significant adverse impact on the Delta's fish and wildlife resources and undermine the efforts of CALFED to restore the estuary we don't believe it is prudent to include this mitigation option. Specific reference to using public funds to pay for out-of-valley disposal of high salinity selenium contaminated drain water should, therefore, be deleted as a specific mitigation measure.

9) Areas of controversy are not adequately disclosed and discussed-

We recommend that the top five areas of controversy be disclosed and briefly discussed in the DEIS/EIR in a chapter dedicated to these issues. Candidates that we would recommend include:

- 1- An isolated conveyance system and preserving the "common pool". A brief discussion of this issue could be followed with an explicit description of how the Assurances package will work from the perspective of internal Delta water quality for agriculture and continued maintenance of the Delta's levee system.
- 2- Agricultural land conversions and addressing third party impacts.
- 3- Increased demand for water and efforts to increase supply as compared to increasing conservation efforts.

Page Specific Comments

Page specific comments are attached in tabular form. They are also being provided electronically to your staff on the disk you included with the draft AD.

This concludes our comments at this time. Again thank you for the opportunity to

provide our input. If you have any questions, please contact Mr. Frank Wernette of our Bay-Delta Division, 4001 N. Wilson Way, Stockton, California 95205-2486, (209) 948-7800.

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